

**MISSISSIPPI DEPARTMENT OF EDUCATION
ADMINISTRATIVE PROCEDURES RULES**

Part I – Administrative Rules

**100 RESPONSIBILITIES OF THE MISSISSIPPI DEPARTMENT OF
EDUCATION AND THE MISSISSIPPI BOARD OF EDUCATION**

101 Responsibilities of the Mississippi Department of Education.

The State Department of Education (“Department”) shall be under the direction and supervision of the State Superintendent of Public Education. The State Department of Education shall be organized into functional divisions as established by the State Board of Education, including any divisions established by law and prescribing the duties of the directors of such divisions.

102 Responsibilities of the Mississippi Board of Education. The Mississippi Board of Education (“Board”) establishes and maintains a system-wide plan of performance, policy and direction of public education and adopts and maintains a curriculum and a course of study to be used in the public schools that is designed to prepare the state’s children and youth to be productive, informed, creative citizens, workers and leaders. The Board also regulates all matters arising in the practical administration of the school system. The Board regulates issues such as curriculum, teacher standards and certification, student testing, accountability and school accreditation.

103 Where and how public may obtain information. The text of all Board policy, as well as information regarding pending rules and meetings may be obtained by visiting the Department’s website at www.mde.k12.ms.us. The following is a list of categories of current policies adopted by the Board. Requests for Declaratory Opinions may be made pursuant to Part III of these rules. Otherwise, requests for information may be made pursuant to and in accordance with the Mississippi Open Records Act and the Board policy by submitting written requests to:

State Superintendent
Mississippi Department of Education
P. O. Box 771
Jackson, MS 39205-0771
ATTN: PUBLIC RECORDS REQUEST

- 200 ACADEMIC EDUCATION
- 300 ACCOUNTABILITY
- 400 ACCREDITATION
 - 401 Bulletin
 - 402 Conservatorship
- 500 ADMINISTRATIVE EXPENSE REDUCTION
- 600 ADMINISTRATIVE PROCEDURES ACT
- 700 AGENDA, STATE BOARD OF EDUCATION
- 800 ADMINISTRATIVE PROCESS AND PERFORMANCE REVIEW
- 900 ALTERNATE EDUCATION PROGRAMS
 - 901 Guidelines
 - 902 GED Standards
- 1000 APPROVALS, NON-PUBLIC
- 1100 ATTENDANCE REPORTING
- 1200 AUDIT, SDE RESOLUTION PROCESS
- 1300 AWARDS
 - 1301 Administrator
 - 1302 Parent
 - 1303 Teacher
- 1400 BOARD OF EDUCATION OPERATIONS
 - 1401 Agenda
 - 1402 Compensation for Travel
 - 1403 Executive Sessions
 - 1404 Meetings
 - 1405 Minutes
 - 1406 Notification of Meetings
 - 1407 Officer's Duties
 - 1408 Officer Election
 - 1409 Rules of Order
 - 1410 Voting Procedures
- 1500 BUSINESS AND SUPPORT SERVICES
- 1600 CALENDAR
- 1700 CERTIFICATION (LICENSURE)
 - 1701 Administrator Preparation
 - 1702 Administrator Process and Performance
 - 1703 Review
 - 1704 Agreement, NASDTEC
 - 1705 Armed Forces Activation
 - 1706 Commission, Hearings and Appeals
 - 1707 Nursery through First Grade

- 1708 Postsecondary Licensure (Vocational)
- 1709 Regulations
- 1710 Reporting Infractions
- 1711 Skills, K-8 Mathematics
- 1712 Teacher Process and Performance
- 1713 Review

- 1800 CHARACTER EDUCATION
- 1900 CHARTER SCHOOLS
- 2000 CHILD NUTRITION
 - 2001 Administrators
 - 2002 Competitive Food
 - 2003 Day Care Home Inspections
 - 2004 Day Care Management Plans
 - 2005 District Application
 - 2006 Eligibility Monitoring, and Management (Child Care Programs)
 - 2007 Family Day Care
 - 2008 Purchasing System
 - 2009 Termination, Day Care Sponsors

- 2100 CLASS SIZE
- 2200 COLLEGE ADMISSIONS
- 2300 COMMUNICABLE DISEASES
- 2400 CONSOLIDATED APPLICATIONS (FEDERAL FUNDS)
- 2500 CONTRACT APPROVAL (SDE)
- 2600 CONTRACTS, TEACHER
- 2700 COST REIMBURSEMENT/SALARY SUPPLEMENTS
- 2800 CRIMINAL BACKGROUND CHECKS
- 2900 CURRICULUM
 - 2901 Vocational Curriculum
 - 2902 Vocational
 - 2903 Secondary Schools
 - 2904 Elementary Schools

- 3000 DRIVER TRAINING
- 3100 DROPOUT PREVENTION
 - 3101 Compulsory School Attendance
 - 3102 Reporting Unexcused Absences
 - 3103 Attendance Court Ordered

- 3200 DRUG TESTING, SDE STAFF
- 3300 EDUCATION ACCOUNTABILITY
- 3400 ENHANCEMENT FUNDS
- 3500 EQUITY FUNDING
- 3600 FUNCTIONAL LITERACY EXAM
- 3700 GIFTED

- 3800 GRADUATION REQUIREMENTS
- 3900 GRANTS/SUBGRANTS/CONTRACTS APPROVAL (SDE)
- 4000 HEALTHY AND SAFE SCHOOLS
 - 4001 Unsafe School Choice Option
 - 4002 Reporting School Violence
- 4100 HISTORICAL SITES (RESTORATION)
- 4200 HOMELESS
- 4300 INTERVENTION
- 4400 KINDERGARTEN
- 4500 LEADERSHIP AND PROFESSIONAL DEVELOPMENT
- 4600 LEGISLATIVE RECOMMENDATIONS
- 4700 LEVEL 1 AND 2 DISTRICTS CONSOLIDATED APPLICATIONS
- 4800 LONG TERM SUBSTITUTES
- 4900 MINIMUM PROGRAM
 - 4901 Section 504 Teacher Units
 - 4902 Special Education Teacher Approval
 - 4903 Teacher Selection
 - 4904 Withholdings Funds
- 5000 MISCELLANEOUS
- 5100 MISSISSIPPI ADEQUATE EDUCATION PROGRAM
- 5200 MISSISSIPPI STATE SCHOOLS
 - 5201 Lampton Auditorium, Mississippi School for the Arts
- 5300 MISSISSIPPI STUDENT INFORMATION SYSTEMS
- 5400 MISSISSIPPI VIRTUAL PUBLIC SCHOOLS
- 5500 MONTHLY ATTENDANCE REPORTS
- 5600 NON-PUBLIC APPROVAL
- 5700 PAPERWORK REDUCTION
- 5800 PARENT AWARDS
- 5900 PROBATION (CONSERVATORSHIP)
- 6000 PUBLIC SCHOOL FUNDING
 - 6001 Applications
 - 6002 Application Evaluation
 - 6003 Diversion of \$10,000,000
 - 6004 Hearing Procedures
 - 6005 Historical Sites
 - 6006 Kindergarten Classrooms
 - 6007 Regulations
 - 6008 Roofs
 - 6009 Relocatable Classrooms
 - 6010 Staff Signatures
- 6100 PUBLIC RECORDS ACT
- 6200 QUALIFIED ZONE ACADEMY BONDS

- 6300 READING IMPROVEMENT
- 6400 RECRUITMENT
- 6500 REMEDIATION
 - 6501 State
 - 6502 Federal

- 6600 RESIDENCY VERIFICATION
- 6700 SABBATICALS
- 6800 SCHOLARSHIPS
- 6900 SCHOOL BUSINESS OFFICIALS
- 7000 SCHOOL EXECUTIVE MANAGEMENT INSTITUTE
- 7100 SCHOOL RECORDS
- 7200 SPECIAL EDUCATION
 - 7201 Educable Child Care
 - 7202 Exemptions, Maximum Enrollment
 - 7203 Extended School Year
 - 7204 Hearing Procedures, IDEA
 - 7205 Medicaid Placements
 - 7206 Pooling State Funds
 - 7207 Preschool
 - 7208 Referral to Placement Process
 - 7209 Resource Program Numbers
 - 7210 Special Grant Selection Criteria
 - 7211 State Plan
 - 7212 Teacher Unit Approval
 - 7213 Transportation
 - 7214 University Based Programs

- 7300 STUDENTS
 - 7301 Residency Verification
 - 7302 Transfers

- 7400 TEACHERS
 - 7401 Awards
 - 7402 Contracts
 - 7403 Experience
 - 7404 Housing
 - 7405 Moving Expense
 - 7406 Scholarships
 - 7407 Section (Under Minimum Program)
 - 7408 Teacher Unit Approval Under Section 504
 - 7409 Process and Performance Review

- 7500 TECHNOLOGY PLAN (MONITORING)
- 7600 TESTING
 - 7601 Exclusions and Accommodations

- 7602 FLE
- 7603 FLE Test Disclosure
- 7604 Grades 3 and 7 Benchmarks for the MCT
- 7605 Graphing Calculators Required
- 7606 Norm-Referenced
- 7607 Schedule
- 7608 Setting Student-Level Standards on the MCT & SATP

- 7700 TEXTBOOKS
 - 7701 Administrative Handbook Rules and Regulations
 - 7702 Educational Enhancement Funds

- 7800 TITLE PROGRAMS
 - 7801 Complaint Procedures
 - 7802 Expenditures of Funds on Instruction
 - 7803 Program Improvement
 - 7804 English Language Learners

- 7900 TRANSPORTATION
 - 7901 Bids
 - 7902 Drivers
 - 7903 Emergency Removal of Buses
 - 7904 Exceptional Children
 - 7905 Inspection of Buses
 - 7906 Leased Buses
 - 7907 Pupil Transportation Guide
 - 7908 Repair Shoes
 - 7909 Seat Belts
 - 7910 Special Events
 - 7911 Use of Buses

- 8000 VIOLENCE
- 8100 VOCATIONAL, ACHIEVEMENT
 - 8101 Equity Requirements
 - 8102 Ongoing Program Perimeters
 - 8103 Practical Nursing Programs
 - 8104 Program Definitions

- 8200 VOCATIONAL, GENERAL ADMINISTRATION
 - 8201 Appeals Procedures for Consortia/Joint
 - 8202 Plan Waiver
 - 8203 Articulation of Programs
 - 8204 Assurance of Equal Access
 - 8205 Closures JTPA/Other Special Programs
 - 8206 Closures Ongoing Programs
 - 8207 Course Destination

- 8208 Designation of Agents for Delivery of Service
- 8209 Evaluation & Improvement
- 8210 Live Work Projects
- 8211 Local Advisory Councils Crafts Committee
- 8212 Local Plan
- 8213 New Program Approval for Ongoing Programs
- 8214 Non-State Plan Programs
- 8215 Program Standards
- 8216 Public Hearings
- 8217 State Plan
- 8218 Statistical Data

- 8300 VOCATIONAL, ANNUAL OPERATING BUDGET
 - 8301 Allocation Non Plan Funds
 - 8302 Allocation of Plan Funds
 - 8303 Hearings on Local Applications (Budget)
 - 8304 Maximum Reimbursement Salary Schedule
 - 8305 Other State Funds for Support
 - 8306 Reimbursement Local Personnel Salaries
 - 8307 Subsidies, Loans/Grants 206 & 201
 - 8308 Budgets

- 8400 VOCATIONAL, ASSIGNMENT
 - 8401 Counselor
 - 8402 Length of Employment & Authority of Directors
 - 8403 Personnel Assignment Schedule
 - 8404 Work-Based Learning Coordinator

- 8500 VOCATIONAL, BASIC SKILLS TRAINING
- 8600 VOCATIONAL, CERTIFICATION
- 8700 VOCATIONAL, CURRICULUM DEVELOPMENT
- 8800 VOCATIONAL, EQUIPMENT
 - 8801 Acquisition /Accountability Instructional Equipment
 - 8802 Equipment Sales

- 8900 VOCATIONAL, FACILITIES
 - 8901 Construction of Area Centers
 - 8902 Use, Transfer of Title & Disposition of Local Phy. Fac.

- 9000 VOCATIONAL LICENSURE
- 9100 VOCATIONAL, PROFESSIONAL DEVELOPMENT
- 9200 VOCATIONAL, REVENUES
 - 9201 Local Reimbursable Expense-Equipment, Supplies, Etc
 - 9202 Local Reimbursement Expense-Construction
 - 9203 Local Reimbursable Expense-Travel
 - 9204 Maintenance of Local Effort

9300 VOCATIONAL, STATE EDUCATION AGENCY RELATIONS
9400 VOCATIONAL, STUDENT ACTIVITIES
9500 WEAPONS
9600 WITHHOLDING FUNDS

PART II - HEARING PROCEDURES

Pursuant to Section 25-43-3.104 of the Mississippi Administrative Procedures Law, the Mississippi Board of Education must afford persons the opportunity to submit, in writing, argument, data, and views on a proposed rule. The Board may, in its discretion, schedule an oral proceeding on any proposed rule. However, the Board must schedule an oral proceeding on a proposed rule if, within twenty (20) days after the proper filing of the notice of proposed rule adoption, a written request for an oral proceeding is submitted by a political subdivision, an agency or ten (10) persons.

Pursuant to Section 25-43-3.104, an agency may issue rules for the conduct of oral rule-making proceedings or prepare reasonable guidelines or procedures for the conduct of any such proceedings. If a written request for an oral proceeding is received from an eligible party as described above, the Board prescribes the following procedures for the conduct of oral hearings.

1. An oral proceeding will be scheduled no earlier than twenty (20) days after notice of the proceeding's location and time is properly filed with the Secretary of State for publication in the administrative bulletin.
2. Within three (3) days after filing with the Secretary of State, notice of the location and time for the proceeding shall be mailed to each person who has made a timely request to the Department to be placed on the mailing list maintained by the Department of persons who have requested notices of proposed rule adoptions.
3. Within three (3) days after filing with the Secretary of State, notice of the location and time for the proceeding shall be published in newspapers with general circulation throughout the state.
4. The Board designates the State Superintendent of Education or another presiding officer designated by the State Superintendent to preside at a required oral proceeding on a proposed rule.
5. Oral proceedings shall be open to the public.
6. A record, to include all documents submitted at the proceeding, shall be made by stenographic or other means of all oral proceedings. The record shall be available for cost upon the written request of an applicant.
7. Oral proceedings shall not be conducted pursuant to statutory or formal rules of evidence or procedure. The presiding officer's authority to limit oral testimony includes, but is not limited to, those situation necessary to keep the hearing focused on the proposed rule or to prevent undue repetition in the proceeding.

8. The presiding officer shall make a recommendation to the Board at its next, regularly scheduled meeting. Said recommendation shall include: (i) the proposed rule; (ii) a summary of the oral proceeding; and, (iii) recommendations.

PART III - DECLARATORY OPINIONS

1. Scope. Part III of these Rules is promulgated pursuant to Miss. Code Ann. §25-43-2.103(2) of the Administrative Procedure Law, and is intended to set forth the Department's rules governing the form and content of requests for declaratory opinions, and the Department's procedures regarding the requests, as required by Mississippi Code § 25-43-2.103. These rules are intended to supplement and be read in conjunction with the provisions of the Mississippi Administrative Procedures Law, which may contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between these rules and the Mississippi Administrative Procedures Law, the latter shall govern.

2. Persons Who May Request Declaratory Opinions. Any person with a substantial interest in the subject matter may request a declaratory opinion from the Department by following the specified procedures. "Substantial interest in the subject matter" means: an individual, business, group or other entity that is directly affected by the Department's administration of the laws within its primary jurisdiction. "Primary jurisdiction of the agency" means the agency has a constitutional or statutory grant of authority in the subject matter at issue.

3. Subjects Which May Be Addressed In Declaratory Opinions. The Department will issue declaratory opinions regarding the applicability to specified facts of: (1) a statute administered or enforceable by the Department or (2) a rule promulgated by the Board. The Department will not issue a declaratory opinion regarding a statute or rule which is outside the primary jurisdiction of the agency.

4. Circumstances In which Declaratory Opinions Will Not Be Issued. The Department may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

(a) lack of clarity concerning the question presented;

(b) there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;

(c) the statute or rule on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;

(d) the facts presented in the request are not sufficient to answer the question presented;

(e) the request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;

(f) the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statute or rule on which a declaratory opinion is sought;

(g) no controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute or rule;

(h) the question presented by the request concerns the legal validity of a statute or rule;

(i) the request is not based upon facts calculated to aid in the planning of future conduct but is, instead, based on past conduct in an effort to establish the effect of that conduct;

(j) no clear answer is determinable;

(k) the question presented by the request involves the application of a criminal statute or a sets of facts which may constitute a crime;

(l) the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;

(m) The question is currently the subject of an Attorney General's opinion request or has been answered by an Attorney General's opinion;

(n) A similar request is pending before this agency or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such a opinion would constitute the unauthorized practice of law.

(o) Where issuance of a declaratory opinion may adversely affect the interests of the State, the Board, the Commissions appointed by the Board, Department or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise;

(p) The question involves eligibility for a license, permit, certificate or other approval by the Department or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, certificate or other approval would be determined.

5. Written Request Required. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Department.

6. Where to Send Requests. All requests must be mailed, delivered or transmitted via facsimile to:

Mississippi Department of Education
P.O. Box 771
Jackson, Mississippi 39205-0711
ATTN: DECLARATORY OPINION REQUEST

The request shall clearly state that it is a request for a declaratory opinion. No oral, telephone requests or email requests will be accepted for official opinions.

7. Name, Address and Signature of Requestor. Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any other administrative or judicial tribunal.

8. Question Presented. Each request shall contain the following:

- (a) a clear and concise statement of all facts on which the opinion is requested;
- (b) a citation to the statute or rule at issue;
- (c) the question(s) sought to be answered in the opinion, stated clearly;
- (d) a suggested proposed opinion from the requestor, stating the answers desired by petitioner and a summary of the reasons in support of those answers;
- (e) the identity of all other known persons involved in or impacted by the described factual situation, including their relationship to the facts, name, mailing address and telephone number; and
- (f) a statement to show that the person seeking the opinion has a substantial interest in the subject matter.

9. Time for Department's Response. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Department shall, in writing:

(a) issue a declaratory opinion regarding the specified statute or rule as applied to the specified circumstances;

(b) decline to issue a declaratory opinion, stating the reasons for its action; or

(c) agree to issue a declaratory opinion by a specified time but not later than ninety (90) days after receipt of the written request.

The forty-five (45) day period shall begin running on the first State of Mississippi business day on or after the request is received by the Department, whichever is sooner.

10. Opinion Not Final for Sixty Days. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Department may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

11. Notice by Department to third parties. The Department may give notice to any person, agency or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from other persons, agencies or other entities other than the requestor.

12. Public Availability of Requests and Declaratory Opinions. Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the Department's public records request procedure. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

13. Effect of a Declaratory Opinion. The Department will not pursue any civil, criminal or administrative action against a person who is issued a declaratory opinion from the Department and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the Department shall be binding only on the Department and the person to whom the opinion is issued. No declaratory opinion will be used as precedent for any other transaction or occurrence beyond that set forth by the requesting person.